

# EXHIBIT 22

**In The Matter Of:**

*Fair Fight Action v.  
Raffensperger*

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*Kevin Kennedy  
March 31, 2020*

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1 went back and looked at the depositions of Chris  
2 Harvey. There were three different depositions that he  
3 provided in this case. Since my report, I've looked at  
4 expert witness depositions that were taken after my  
5 report, notably the depositions of Ken Mayer, Dan  
6 Smith, Michael McDonald. There were two other  
7 professors, one from I think Dartmouth.

8 Q. Was that Dr. Herron?

9 A. Yes, yes, Dr. Herron.

10 Q. Okay.

11 A. And looked at a large number of training  
12 materials that were produced since my report and  
13 complaints from the 2017 and 2018 elections. Obviously  
14 met with counsel just to go over my report and their  
15 expectations of what they thought might be asked today.

16 Q. Sure. Okay. And in looking at the  
17 additional training materials, do you know if you  
18 looked at the 2020 poll worker manual as it's called?

19 A. No. In fact, I made a specific request  
20 about that and was advised that it had not been  
21 produced.

22 Q. Okay. Do you know about when you made that  
23 request?

24 A. Within the last two weeks.

25 Q. Okay.

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1           A.       I looked at the statutes that were  
2 available, which would have been after the law was  
3 passed. In my preparation there were a lot of  
4 questions in the depositions about changes that House  
5 Bill 316 made. I did not look at the legislation  
6 itself. But, you know, there were materials that were  
7 presented that summarized House Bill 316 that were part  
8 of the materials presented to the county election  
9 official conferences, so in that sense I had somewhat  
10 of a familiarity with the changes.

11           Q.       All right. Are you offering an opinion on  
12 whether any state officials have acted with intentional  
13 discrimination towards voters of color?

14           A.       Again, I looked at allegations concerning  
15 that, materials related to that, but I'm not offering  
16 an opinion specifically on that, no.

17           Q.       All right. Okay. Let's talk briefly about  
18 your time with the Government Accountability Board in  
19 Wisconsin and its predecessor organization. Who  
20 appointed you as the director of the GAB?

21           A.       The Government Accountability Board itself  
22 appointed me. They are six former judges who were  
23 appointed by the governor from a list that was  
24 recommended to the governor by state court of appeals  
25 judges based on applications they reviewed, and then

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1 obligation, to directly train poll workers?

2 A. I think the obligation is implicit within  
3 the responsibilities of the Secretary of State. It's  
4 not an -- you're correct, it's not an express one  
5 because it runs down through the counties in terms of  
6 the training.

7 Q. All right. So with that in mind, let's look  
8 at Code Section 21-2-70, we'll mark as Exhibit 6.

9 (Whereupon, Defendants' Exhibit Number D-6  
10 was marked for identification.)

11 A. Okay.

12 BY MR. BELINFANTE:

13 Q. And isn't it true that this code section  
14 addresses the powers of superintendents, election  
15 superintendents in cities and counties?

16 A. The powers and duties, yes.

17 Q. All right. And one of those duties in  
18 paragraph 8 is to instruct poll officers and others in  
19 their duties. Do you see that?

20 A. Yes, I do.

21 Q. Okay. So is it your opinion that Georgia  
22 law imposes a duty on city and county election  
23 superintendents to train poll officers?

24 A. Yes.

25 Q. And indeed one of the obligations imposed on

1 Q. Right. But it doesn't -- I mean, you also  
2 describe in that same section we're looking at that  
3 there's a threshold in foundation. Help me -- how does  
4 one identify what that threshold --

5 A. How does one identify what that threshold  
6 is? You look at the requirements in the state code of  
7 what needs to be done to carry out an election. You  
8 look at the federal framework that surrounds that, the  
9 National Voter Registration Act, the Voting Rights Act,  
10 the Help America Vote Act, the UOCAVA, the  
11 Accessibility Act for the Elderly and Handicapped.  
12 That gives you the foundation of what needs to get done  
13 and establishes your threshold of what the  
14 responsibilities are going to be. And --

15 Q. But -- go ahead.

16 A. Well, I think I've made my point.

17 Q. Is there a single document or gold standard  
18 promulgated by an organization that sets forth, you  
19 know, what -- if I'm looking to get the gold standard  
20 in training and I'm looking to follow -- define what  
21 that threshold in foundation is, is there a singular  
22 document I can go to or a standard, or is there not?

23 A. I don't think that there is -- I mean, I  
24 have not -- I mean, this is why I was talking with  
25 various people I know who are involved in this to see

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1           A.     I think the consequences of the shortcomings  
2 of the program lead to voters losing their opportunity  
3 to participate in the elections. And that comes  
4 through in the complaints that people have, and I think  
5 it certainly flows from the fact that not enough  
6 information and not enough focus is given to how do we  
7 treat provisional ballots and absentee ballots and how  
8 do I properly manage my responsibilities -- by my, I  
9 mean the county official -- with respect to the Georgia  
10 voter registration system.

11                 The outcomes that surprised me are any  
12 complaints I got about I can't find that information,  
13 about I just registered at the Department of Driver  
14 Services, or whatever the DDS acronym is for, and now  
15 the information --

16           Q.     Hu?

17           A.     -- doesn't show up on the website or I've  
18 been registered, now I'm told I'm not there anymore,  
19 what happened. There's an awful lot of those  
20 complaints consistently throughout the process. And I  
21 look at the expert reports that point out the failings  
22 in that area, and that directly impacts people's  
23 constitutionally protected right to vote.

24           Q.     Anything other than voter registration  
25 errors that you believe training has led to an

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1 focused on the Secretary of State. But, you know, it's  
2 clear that what was being conveyed down the line wasn't  
3 effective given the large number of complaints that  
4 were coming out of the election.

5 Q. But I guess my question is a little bit more  
6 specific than that, which is do you have an opinion  
7 on -- or does your report have an opinion on county  
8 training manuals for poll workers?

9 A. It does not have a specific opinion on that,  
10 no.

11 Q. Okay. And your criticisms that you just  
12 spoke of regarding the complaint, you're presuming the  
13 facts in the complaint are true. Is that fair?

14 A. That's fair.

15 Q. All right.

16 A. I think there's a reasonable basis for that  
17 given the number of the same types of issues recurring  
18 in these complaints.

19 Q. Well, let's talk about that for a minute.  
20 How much -- do you have an opinion or does your report  
21 have an opinion on how many errors of a similar kind  
22 need to happen in order for something to be systemic?  
23 I didn't see your report address that, and that's my  
24 question is whether your report does.

25 A. My report doesn't quantify it. It talks



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1 about that as a measure for, you know, like the canary  
2 in the coal mine. It tells you there's an issue and  
3 spurs you to respond to that issue.

4 Q. Sure. But you had extensive experience with  
5 poll workers, certainly at least -- and, in fact, you  
6 are one in Wisconsin; right?

7 A. That's right.

8 Q. And in your experience are poll workers  
9 trying to do the right thing by voters?

10 A. In my experience, they generally are.  
11 There's occasionally a rogue poll worker that you sort  
12 of wonder given their personalities what's driving  
13 them. My dad was a poll worker, and the guy who was  
14 the chief inspector used to drive me nuts when I'd stop  
15 by to visit that polling place.

16 Q. But those folks -- I'm sorry. Go ahead.

17 A. No. I was just giving an example that, yes,  
18 they are trying to do that. But we know that mistakes  
19 are made, and you want to minimize those and certainly  
20 mitigate the impact of those mistakes.

21 Q. Sure. And do you have any reason to believe  
22 that at least as it relates to that standard, and by  
23 that I mean trying to assist the voter and coming at it  
24 from a position of goodwill, that the majority of poll  
25 workers in Georgia are different from those in

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1 would be more effective for them than just reading  
2 materials cold?

3 A. Yeah. I talked about the fact that you need  
4 to -- any training has to have several different  
5 channels because you're going to have a diverse  
6 audience, and the different channels reaffirm points  
7 that you've made. I mean, that's the idea of a  
8 PowerPoint is to give you a visual illustration. I  
9 think we've all been at conferences where someone just  
10 reads a PowerPoint.

11 Q. Yeah. Those are the ones where the coffee  
12 sells out quickly. I've been to plenty. Page 13 of  
13 the court's document, number 167, page 12 of yours,  
14 there's a discussion a little bit about Firefly. At  
15 the time that you completed your report, were you given  
16 any documents that showed the files that are available  
17 on Firefly?

18 A. I don't recall any documents. There was  
19 some descriptions in the depositions. I don't recall  
20 seeing a document that listed everything that was  
21 there, but --

22 Q. Okay. Have you since seen a document like  
23 that?

24 A. No.

25 Q. All right. Are you aware that other states

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1 and groups have come to Georgia to study Firefly  
2 because they find it to be effective?

3 A. I'm not aware of that.

4 Q. All right. Also on page 13 of the court's  
5 number, page 12 of your report, there's a discussion of  
6 the Election Center, which you've talked about some  
7 thus far. Is the Election Center -- poll workers  
8 typically don't go take classes at the Election Center;  
9 is that correct?

10 A. Very few do, right.

11 Q. Okay. It's more for supervisors and other  
12 trainers; is that fair?

13 A. Yeah, generally -- I mean, you'll have a  
14 mixture of state and local officials, more local  
15 officials than state.

16 Q. Uh-huh (affirmative).

17 A. And by local I mean the administrators, not  
18 the election day officials.

19 Q. Okay. Let me ask you on that page 12 of  
20 your report, page 13 of the court's page numbers,  
21 there's a reference to Appendix B in your report, and I  
22 did not -- I didn't see where I got a copy of Appendix  
23 B. Mine ends with Appendix A, page 3.

24 MR. BELINFANTE: Beth, do you know if that  
25 was -- if maybe I printed the wrong copy or if it

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1           A.     What, you know, my opinion is is that you  
2     don't just say follow the law. You give equal -- you  
3     provide some leadership. You give them a reason why  
4     that's the case, because people don't always follow the  
5     law. And there are consequences when you don't follow  
6     the law, and understanding what those consequences are  
7     is important. That's, you know, what I was  
8     identifying -- what I identify in my opinion was that  
9     that's an important element to ensure that you are  
10    protecting those rights by providing that. You're  
11    doing this for the voter, and here's why we're doing  
12    it.

13          Q.     Right. But at the end of the day, for  
14    whatever reason they're doing it -- they could be doing  
15    it just because they like law and want to enforce law.  
16    As long as the law is being complied with, then there's  
17    not a diminution of that voter's rights articulated in  
18    that law; is that correct?

19          A.     That's correct. The idea -- the idea of the  
20    training is simply to reinforce that it's done.

21          Q.     And I think I've asked this before, but you  
22    would agree with me that at least kind of coming into  
23    the polling place most poll workers want to comply with  
24    the law.

25          A.     Yes. But they have to know what it is and

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1 persons of color?

2 A. That sentence presumes that there can be and  
3 that by focusing specifically on the voter and the  
4 voter rights, you act in a colorblind or color neutral  
5 manner.

6 Q. All right. And your report does not opine  
7 that there is discrimination against persons of color  
8 in voting in Georgia, does it?

9 A. My report is informed by the past history of  
10 voting practices in Georgia, the concerns that have  
11 been raised in media reports over the years, and the  
12 concerns raised in the lawsuit, but it does not  
13 specifically have an opinion as to whether or not that  
14 is the case. It's really directed at that by making  
15 sure that the training programs are voter-centric,  
16 transparent, that you're going to avoid and you're  
17 going to protect against having those kind of  
18 discriminatory impacts.

19 Q. In the next paragraph after the one we just  
20 talked about, you discuss absentee voting and  
21 provisional ballots. Is it your contention that --  
22 well, strike that. I think we've covered that area.  
23 What would you say based on what you've seen is the  
24 foundation for conducting elections in Georgia?

25 A. I'm sorry. What do you mean the foundation

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1 for conducting elections?

2 Q. I'm looking on page 17 of your report, page  
3 18 of the court's document. The second paragraph ends  
4 with "This training approach would send a message to  
5 everyone involved in the electoral process, from poll  
6 workers to county election officials to voters to  
7 candidates, that enabling full participation by all  
8 voters is the foundation for conducting Georgia  
9 elections." So my question is what do you believe is  
10 the foundation for conducting Georgia elections?

11 A. You mean as opposed to serving the voter?

12 Q. No. I mean, I couldn't tell from that  
13 paragraph if you were implying that Georgia elections  
14 had a different foundation.

15 A. No, no, I was not -- I was saying that that  
16 should be the foundation of any electoral system is  
17 facilitating participation by the voters, protecting  
18 their rights. And I wasn't suggesting that that  
19 wouldn't be the foundation, but to ensure that people  
20 who participate in the process understand that. That's  
21 what my recommendations are going toward.

22 Q. I gotcha. Okay. All right. Let's look at  
23 the same page, the second full paragraph under the  
24 underlined "Mandatory Uniform Training Protocol for  
25 Poll Workers." The last sentence of that paragraph

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1 state mandated -- or, excuse me, a mandatory  
2 state-directed uniform training program is the best  
3 way, are there case studies you relied on for that?

4 A. No, there were not case studies. It's,  
5 again, based on my experience that if there is not  
6 leadership at the state level, you're not going to get  
7 uniformity, you're not going to get compliance. You're  
8 going to have instances of people being deprived of  
9 their right to participate in the process.

10 Q. Looking further down the page, you say in  
11 the last full paragraph, "Although the manual contains  
12 helpful information, it is far from comprehensive and  
13 contains large chunks of statutory language that are  
14 difficult to understand. It also takes an  
15 inappropriately passive approach to issuing provisional  
16 ballots, which appears from my review of complaints in  
17 the 2018 general election to be a significant source of  
18 inconsistent practices." What did you mean by passive  
19 approach to issuing provisional ballots?

20 A. Further on in my report there are examples  
21 of the language that's in that manual that suggests  
22 that you may do something, you might do this, if the  
23 voter asks you may do it. That to me when I read that,  
24 I'm like wait a minute. Provisional ballots, you need  
25 to be much more specific about when and how you do

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1 A. Yes, I have.

2 Q. Is it your opinion that the default rule in  
3 Georgia is to hand out a paper -- or, excuse me, a  
4 provisional ballot?

5 A. That seems to be what Chris Harvey says  
6 should be the case.

7 Q. And do you have reason to believe that it is  
8 not the case?

9 A. I'm looking at, you know, the complaints  
10 that came in. It seemed like there were a large number  
11 of instances where people didn't get a provisional  
12 ballot. I'm not sure whether or not they were entitled  
13 to it, but it certainly generated concerns that they  
14 were willing to reach out to the Secretary of State's  
15 office and say, "I don't know why I didn't get a  
16 provisional ballot," or other people were deserving and  
17 someone was not getting offered that opportunity.

18 Q. In your experience, have you seen similar  
19 complaints in other states?

20 A. I've read media accounts that suggest that,  
21 yes. I've dealt with election observers who come from  
22 other states to Wisconsin who put a strong emphasis on  
23 that and often have to remind them. In our training  
24 with poll workers, we talk about the fact that they  
25 need to look at our resources when it comes to how you



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1 process a provisional ballot because you can't -- as I  
2 said, the requirements and the provisions are different  
3 in different states.

4 Q. Okay. Have you ever gone and observed an  
5 election in another state?

6 A. I'm reasonably sure I have. I'm just trying  
7 to think of the actual experiences of that. I have  
8 observed elections in South Korea. For some reason I  
9 can't -- I want to say yes, but I just can't give you  
10 an example.

11 Q. Okay. That's fair. And let me ask you  
12 another question on this overly simplified. And I'm  
13 not -- I'm truly not trying to be argumentative, and  
14 forgive me for asking a similar question frequently,  
15 but is there a model kind of training? I mean -- and  
16 I'm thinking almost like the equivalent of a, you know,  
17 model penal code that we learned in law school or the  
18 UCC or something that somebody could turn to for  
19 guidance on best practices as it relates to training on  
20 provisional ballots.

21 A. I'm not aware that there is. I mean, I know  
22 that in the gatherings with the National Association of  
23 State Election Directors people would provide examples  
24 of how they train on provisional ballots. I know that  
25 there's a course on provisional voting -- I'm not sure

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1 if it's specifically provisional voting but where  
2 provisional voting is a key element at the Election  
3 Center. Again, I think a lot of times what you're  
4 looking at with provisional ballots or any other  
5 election-day practice is how can you provide that  
6 information to poll workers and election administrators  
7 and voters in a method that is going to ensure that  
8 provisional ballots are issued appropriately.

9 Q. I'm looking at page -- same page, sorry,  
10 page 19 at the bottom of the page, page 20 at the top.  
11 When you talk about the voter identification documents,  
12 you write -- and this is the fourth full paragraph,  
13 "Interestingly, there is only one person of color  
14 depicted in the 12 examples of acceptable  
15 identification." Do you see that?

16 A. Yes.

17 Q. How does that really impact training?

18 A. It provides the poll workers with an  
19 exposure to the voters that are going to come into the  
20 polling place. I know that when we developed our voter  
21 identification training program, we were very focused  
22 on making sure that the depictions of acceptable forms  
23 of identification showed a diverse group of individuals  
24 by age, gender, and race.

25 Q. But, I mean, is it then the opinion -- or

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1 the conclusion to draw from that that Georgia poll  
2 workers don't know what people of different races look  
3 like?

4 A. No. I'm just saying that -- what I'm saying  
5 is that it goes to reinforcing to the poll workers  
6 you're dealing with a diverse population. It's not a  
7 judgment on what they think. It's a question of how  
8 can you make your training materials more effective and  
9 create an atmosphere that doesn't suggest that only  
10 certain people are entitled to vote or only certain  
11 people are going to show up to vote.

12 Q. So it's your opinion that by not including a  
13 more diverse group that the state is implying that  
14 people of color are not going to show up to vote or  
15 shouldn't be able to show up to vote?

16 A. That's not my opinion, but I think you can  
17 draw an inference about the sensitivity to the training  
18 program, to the training protocols when you look at how  
19 materials are presented.

20 Q. Do you believe that Georgia State election  
21 officials are communicating to local officials that  
22 persons of color are not coming to the polls?

23 A. I don't think that's the case, no.

24 Q. Do you think that state election officials  
25 are communicating implicitly or explicitly to

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1 poll workers that persons of color should not be able  
2 to vote?

3 A. That they are? No.

4 Q. Same page, next paragraph, the last sentence  
5 says, "A model state-directed training initiative for  
6 poll workers must provide participants in the electoral  
7 process with confidence that poll workers know their  
8 responsibilities, will help not hinder voter  
9 participation, and are mindful of the integrity and  
10 importance of the vote of each citizen." Was there a  
11 particular model that you had in mind when writing  
12 that?

13 A. No. I think -- I mean, obviously the  
14 language I'm drawing from is from my experience.  
15 That's what animates the training programs that I was  
16 responsible for overseeing. I think the use of the  
17 term model is -- I think this is a way of communicating  
18 this is an essential element when someone is evaluating  
19 their training program that they can see that this is a  
20 focus because it's going to -- I think it moves the  
21 training to ensuring that voters' rights are protected.

22 Q. All right. Are your criticisms of the poll  
23 worker manual all contained in this report?

24 A. I don't think I was quite as harsh in the  
25 report as I just was earlier.

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1 they were no longer there by the time the board took  
2 action.

3 Q. And --

4 A. But I can't --

5 Q. Okay.

6 A. -- name one, but I remember there were a  
7 handful of them, two, three, four.

8 Q. And do you recall if that -- I mean, if the  
9 county official was no longer in office as a  
10 consequence of what you describe as egregious conduct?

11 A. My sense was that's why they were no longer  
12 there. I think the county was being proactive in  
13 getting rid of them. I mean, the county, as I  
14 understand it, still had some consequences. They may  
15 have -- they may have been fined. They certainly were  
16 given negative publicity. I don't know if they did a  
17 letter of instruction, you know, a direct letter of  
18 instruction to an oversight body about don't hire  
19 someone like this again, but --

20 Q. And so, I mean, in some ways isn't that  
21 evidence that the process is working, that if there's a  
22 truly egregious violation the county is taking care of  
23 it itself?

24 A. In most cases it tells you that the process  
25 is working. I mean, I think what I was describing were